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20 UNITED STATES DISTRICT COURT  
21 EASTERN DISTRICT OF WASHINGTON

22 STATE OF WASHINGTON,

23 Plaintiff,

24 vs.

25 GREYHOUND LINES, INC.,

26 Defendant.

Case No. 20-CV-209-SAB

DEFENDANT GREYHOUND  
LINES, INC.'S OPPOSITION TO  
MOTION TO REMAND

August 20, 2020 (Spokane)  
With Oral Argument: 2:00 p.m.

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DEFENDANT GREYHOUND  
LINES, INC.'S OPPOSITION TO  
MOTION TO REMAND - 1



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## I. INTRODUCTION

Plaintiff filed a Complaint against Greyhound in Washington state court. Greyhound then filed in this Court a Notice of Removal of the ensuing action based on the Federal Officer Removal Statute, 28 U.S.C. § 1442(a)(1). Plaintiff has now filed a Motion to Remand the action to state court, claiming that it was improperly removed, and requesting an award of fees and costs if it were to prevail.

As Greyhound will show, this Court should deny Plaintiff's Motion to Remand with its request for fees and costs.

## II. THE BACKGROUND TO THE MOTION TO REMAND

### A. The Legal Background<sup>1</sup>

The Fourth Amendment to the United States Constitution recognizes the “right of the people to be secure ... against unreasonable searches and seizures ....”

Section 1357 of Title 8 of the United States Codes (“Section 1357”) provides, in pertinent part, that CBP agents “shall have power without warrant,” “within a reasonable distance from any external boundary of the United States,” i.e., with 100 air miles, 8 C.F.R. § 287.1(a)(1), “to board and search for aliens ... any ... vehicle” 8 U.S.C. § 1357(a)(3).

Section 1357 thus authorizes CBP agents to board and search any vehicle within 100 air miles from any external boundary of the United States without any need to

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<sup>1</sup> See ECF No. 8 at 3-4, 12-17.

1 comply with a warrant requirement—and hence without any need to establish any  
2 exception for compliance with any warrant requirement, such as probable cause,  
3 reasonable suspicion, or consent.  
4

5 In authorizing CBP agents to board and search any vehicle within 100 air miles  
6 from any external boundary of the United States without a warrant or a warrant-  
7 exception, Section 1357 prohibits any person from barring them from boarding or  
8 searching the vehicle in the absence of a warrant or warrant-exception.  
9

10 On its face, Section 1357 is presumptively constitutional and hence  
11 presumptively consistent with the Fourth Amendment.  
12

13 The Fourth Amendment allows CBP agents to make stops at checkpoints, even  
14 if the stop is based on ethnicity. That is true if the checkpoint is fixed. That is also  
15 true if the checkpoint is temporary, as where CBP agents treat a location as such.  
16

## 17 **B. The Factual Background**

18 In its Complaint, Plaintiff alleges that Greyhound engaged in unlawful conduct,  
19 i.e., unfair, deceptive, and discriminatory practices, under the CPA and WLAD because  
20 it (1) allowed CBP agents to engage in “unlawful” conduct by boarding and searching  
21 its buses at the Spokane Intermodal Center, and (2) failed to warn its passengers of the  
22 agents’ “unlawful” conduct and of the consequences of such conduct. ECF No. 1-1 at  
23 18-19, 33-36. In other words, Plaintiff alleges that Greyhound engaged in unlawful  
24 conduct under the CPA and WLAD because CBP agents engaged in “unlawful”  
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27



1 conduct of their own. *Id.* By alleging that Greyhound engaged in unlawful conduct  
2 under the CPA and WLAD because it allowed CBP agents to “unlawfully” board and  
3 search its buses, Plaintiff effectively alleges the CPA and WLAD require Greyhound  
4 to bar CBP agents from doing so. *Id.*

5  
6 But in so alleging, Plaintiff either suppresses or ignores facts that support the  
7 lawfulness of the conduct of CBP agents and hence the lawfulness of the conduct of  
8 Greyhound itself. One of these facts is that the applicable law includes not only the  
9 CPA and WLAD, which Plaintiff cites throughout its Complaint, but also Section 1357,  
10 which it cites nowhere. The other facts are that the Spokane Intermodal Center is a  
11 temporary checkpoint, which Plaintiff would later effectively admit, *see* ECF No. 10 at  
12 6-7, and is less than 100 air miles from the United States-Canada border, which  
13 Plaintiff would later expressly admit, *id.* at 6.

14  
15 These facts are crucial, and it is obvious why Plaintiff either suppresses or ignores  
16 them. In *United States v. Gabriel*, 405 F. Supp. 2d 50, 56-62 (D. Maine 2005), the court  
17 held the establishment and operation of a temporary checkpoint by CBP agents pursuant  
18 to Section 1357 is consistent with the Fourth Amendment when the location in question  
19 is within 100 air miles from the United States-Canada border. There, the location was  
20 near Bangor, Maine, which was presumably of concern to CBP because it had a population  
21 of about 33,000, <https://worldpopulationreview.com/us-cities/bangor-me-population> (as  
22 of July 18, 2020). Here, the location is Spokane, which is presumably of greater concern  
23  
24  
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1 to CBP because it has an almost-seven-times-greater population of about 223,000,  
2 <https://worldpopulationreview.com/us-cities/spokane-wa-population> (as of July 18,  
3 2020).  
4

### 5 **C. The Procedural Background**

6 On April 13, 2020, Plaintiff filed its Complaint in the Superior Court of  
7 Washington for the County of Spokane (Case No. 20-2-01236-32). ECF No. 1-1.  
8

9 On June 5, 2020, Greyhound filed its Notice of Removal in this Court under the  
10 Federal Officer Removal Statute. ECF No. 1.  
11

12 On July 2, 2020, Plaintiff filed its Motion to Remand, claiming that Greyhound's  
13 removal was improper, with a request for an award of fees and costs if it were to  
14 prevail. ECF No. 10.  
15

16 Greyhound now files this Opposition to the Motion to Remand, showing that  
17 its removal was proper.  
18

## 19 **III. ARGUMENT**

### 20 **A. The Legal Standard**

21 The legal standard that this Court must apply in ruling on Plaintiff's Motion to  
22 Remand is settled.  
23

24 When a plaintiff moves a federal district court to remand an action to state court  
25 on the ground the defendant improperly removed the action to the federal district court  
26 under the Federal Officer Removal Statute, the federal district court must deny the  
27



1 motion if the plaintiff fails to show the defendant's removal was indeed improper.  
 2 *Goncalves v. Rady Children's Hosp. San Diego*, 865 F.3d 1237, 1243-51 (9th Cir.  
 3 2017).  
 4

5 The Federal Officer Removal Statute provides, in pertinent part, that an "action  
 6 ... that is commenced in a State court ... may be removed" to federal district court if  
 7 the action "is against or directed to" "any person acting under" "any officer ... of the  
 8 United States or of any agency thereof, in an official or individual capacity, for or  
 9 relating to any act under color of such office." 28 U.S.C. § 1442(a)(1).  
 10  
 11

12 The purpose of the Federal Officer Removal Statute is "to ensure a federal forum  
 13 in any case where a federal official is entitled to raise a defense arising out of his [or  
 14 her] duties." *Arizona v. Manypenny*, 451 U.S. 232, 241 (1981). The right of removal  
 15 under the statute is "absolute for conduct performed under color of federal office," and  
 16 the "policy favoring removal 'should not be frustrated by a narrow, grudging  
 17 interpretation of [the statute].'" *Id.* at 242.  
 18  
 19

20 Under the Federal Officer Removal Statute as it stood before 2011 in its prior  
 21 form, which allowed removal "for" an act under color of federal office, a defendant  
 22 whose removal of an action was challenged by motion to remand bore the burden of  
 23 showing that "(a) it is a 'person' within the meaning of the statute; (b) there is a causal  
 24 nexus between its actions, taken pursuant to a federal officer's directions, and [the]  
 25 plaintiff's claims; and (c) it can assert a 'colorable federal defense.'" *Durham v.*  
 26  
 27



1 *Lockheed Martin Corp.*, 445 F.3d 1247, 1251 (9th Cir. 2006).

2 But under the Federal Office Removal Statute as amended in 2011 into its  
 3 present form, which now allows removal “for *or relating to*” an act under color of  
 4 federal office, a defendant continues to bear the burden of showing that it is a “person”  
 5 and that it can assert a colorable federal defense, but now it need only show some  
 6 “connection” or “association,” not a causal nexus, between its actions and the  
 7 plaintiff’s claims. *Latiolais v. Huntington Ingalls, Incorporated*, 951 F.3d 286, 291-  
 8 96 (5th Cir. 2020) (en banc); *accord Sawyer v. Foster Wheeler, L.L.C.*, 860 F.3d 249,  
 9 258 (4th Cir. 2017); *Caver v. Cent. Ala. Elec. Coop.*, 845 F.3d 1135, 1144 & n.8 (11th  
 10 Cir. 2017); *In re Commonwealth’s Mot. to Appoint Counsel Against or Directed to*  
 11 *Defender Ass’n of Phila.*, 790 F.3d 457, 470–71 (3d Cir. 2015).<sup>2</sup>

## 12 **B. The Application of the Legal Standard**

13 In applying this settled legal standard in ruling on Plaintiff’s Motion to Remand,  
 14 this Court should “pay heed” to the “duty” implicit in the standard, which is to  
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16  
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 18  
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 20  
 21 <sup>2</sup> Although in *Goncalves* the Ninth Circuit stated that a defendant must show a  
 22 causal nexus, 865 F.3d at 1244, it revealed in its analysis that a showing of a  
 23 connection or association was sufficient, *see id.* at 1244-45. *See Latiolais*, 951 F.3d  
 24 at 295 n.8 (citing *Goncalves* and identifying the Ninth Circuit as one of the circuits  
 25 that “interpret the ‘causal nexus’ ... requirement ... expansively”).  
 26  
 27

“ ‘interpret’ ” the Federal Officer Removal Statute “ ‘broadly in favor of removal.’ ” *Goncalves*, 865 F.3d at 1244. So interpreting the statute, this Court should deny the motion.

**1. Greyhound Is a Person, Nor Does Plaintiff Attempt to Show Otherwise**

First, Greyhound is a “person” within the meaning of the Federal Officer Removal Statute, and Plaintiff does not attempt to show otherwise. As Plaintiff admits in its Complaint, Greyhound is corporation. ECF No. 1-1 at 7. And as the Courts of Appeal, including that for the Ninth Circuit, “have uniformly held,” “corporations are ‘person[s]’ under [the statute].” *Goncalves*, 865 F.3d at 1244.

**2. There Is a Connection or Association, And Indeed a Causal Nexus, Between Greyhound’s Actions, Taken Pursuant to the Directions of Federal Officers, i.e., CBP Agents, And Plaintiff’s Claims, And Plaintiff Fails to Show Otherwise**

Second, there is a connection or association—indeed, there is a causal nexus—between Greyhound’s actions, taken pursuant to the directions of federal officers, i.e., CBP agents, and Plaintiff’s claims.

CBP agents are federal officers and CBP is a federal agency. *See Pavlov v. Parsons*, 574 F. Supp. 393, 397 (S.D. Tex. 1983).

CBP and CBP agents have broad authority to conduct operations in support of national security, including “transportation checks,” which entail “inspection of interior-bound conveyances” like “buses.” Miller Decl., Ex. 1 at 3 & Ex. 2 at 1 (Section 1357 and



1 other statutory provisions “authorize[ ] U.S. Border Patrol agents to board and search  
 2 vehicles or conveyances for aliens within a reasonable distance from the U.S. border”).  
 3 Indeed, CPB promotes its authority on its website. *Id.* at Ex. 7 at 2 (“*Legal authority for the*  
 4 *Border Patrol: What is the legal authority for the Border Patrol to operate checkpoints and*  
 5 *engage in other activities to detect illegal aliens in the United States?, Sep 27, 2019*”).  
 6

7  
 8 Transportation checks by CBP agents are “conducted at a variety of public  
 9 transportation access points including ... bus stations”—like the Spokane Intermodal  
 10 Center—which serve as transportation hubs or nodes. *Id.*, Ex. 2 at 2. “Transportation hubs  
 11 are increasingly used by smuggling organizations ... to move smuggled people, narcotics,  
 12 and contraband to destinations throughout the country.” *Id.* “[T]ransportation nodes” are  
 13 “key” to “stop smuggling and trafficking at or before they reach the border.” *Id.*, Ex. 3 at  
 14  
 15 9.  
 16

17 “Checkpoints are an integral part of [CBP’s] defense-in-depth, layered strategy.” *Id.*  
 18 at 28; Ex. 7 at 2 (same). CBP’s strategy is not a new one. Since at least 2004, CBP has  
 19 asserted that “enforcement actions will take place away from the physical border, at interior  
 20 checkpoints, and lateral from those checkpoints,” and that “assets” will be “deploy[ed] ...  
 21 to interior U.S. locations where there is a direct nexus to border control operations, such as  
 22 at transportation hubs ... and bus stations.” *Id.*, Ex. 4 at “Message from the Commissioner”  
 23 & 13. For years, CBP has promoted “Border Patrol Checkpoints” as a “vital component”  
 24  
 25 of its “Defense in Depth border security strategy.” *Id.*, Ex. 5 and 6. CBP has not limited  
 26  
 27

1 this strategy to the “southwest border,” but has extended it to the “northern border” as well.  
 2 *Id.* at “Message from the Commissioner” and 17; *see id.*, Ex. 3 at 28 (“Checkpoints are  
 3 facilities used by the Border Patrol to monitor traffic on routes of egress from areas on the  
 4 Southwest and Northern borders”). At a “[p]roperly situated check point,” whether  
 5 permanent or temporary, like the Spokane Intermodal Center, CBP agents may conduct a  
 6 “patdown search of a person,” “examine information,” and conduct a “non-destructive  
 7 search of an object” for any “admin[istrative] reason” with “zero susp[icion].” Ex. 10 at 33  
 8 (capitalization omitted); Ex. 11 (same); *see* Ex. 9 (reproducing content appearing in Exs. 10  
 9 & 11).

13 As Plaintiff alleges in its Complaint, Greyhound’s actions include (1) allowing  
 14 CBP agents to board and search its buses at the Spokane Intermodal Center and (2)  
 15 failing to warn its passengers of the fact and consequences of the agents’ boarding and  
 16 searching. ECF No. 1-1 at 5-6, 7-18. Although Greyhound’s actions thus include  
 17 failure to warn of boarding and searching as well as allowing boarding and searching,  
 18 its primary actions consist of allowing boarding and search. That is because, if  
 19 Greyhound had not allowed boarding and searching, it would not have had anything to  
 20 warn anyone about.

24 **a. Greyhound Acted Pursuant to the Directions of CBP Agents**

25 The first question to address is, Did Greyhound act pursuant to the directions of  
 26 CBP agents in allowing them to board and search its buses at the Spokane Intermodal  
 27

1 Center? The answer is, Yes.

2 For a person to act pursuant to a federal officer's direction, the person need only  
3 " 'act[ ] under' [the] federal officer. Although the federal officer removal statute is not  
4 limitless, '[t]he words "acting under" are broad,' and the Supreme Court 'has made  
5 clear that the statute must be "liberally construed." '.... For a [person] to be 'acting  
6 under' a federal officer, the [person] must be involved in 'an effort to *assist*, or to help  
7 carry out, the [officer's] duties or tasks ....' *Goncalves*, 865 F.3d at 1245 (emphasis  
8 original).

9 In allowing CBP agents to board and search its buses at the Spokane Intermodal  
10 Center, Greyhound acted under the agents because it was involved in an effort to assist  
11 or help them carry out their duties or tasks.

12 As noted, Section 1357 authorizes CBP agents to board and search Greyhound's  
13 buses at the Spokane Intermodal Center without a warrant or a warrant-exception, and  
14 thereby prohibits Greyhound from barring CBP agents from boarding or searching any  
15 of its buses there because of the absence of a warrant or warrant-exception.

16 In April 2018, "DHS informed Greyhound that CBP had the legal right to board  
17 buses and conduct immigration checks at terminals without consent or a warrant. It  
18 was clearly conveyed that Greyhound needed to follow the directions of federal  
19 officers during immigration checks." ECF No. 1 at 4.

20 And in January 2019, CBP "publicly assert[ed] its broad authority to conduct  
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1 searches and immigration checks including the Spokane Intermodal Facility  
2 specifically.” *Id.*

3  
4 DHS thereby enlisted—or perhaps more accurately, impressed—Greyhound in  
5 an effort to assist or help CBP agents carry out their duties or tasks in boarding and  
6 searching buses at the Spokane Intermodal Center.

7  
8 Plaintiff nevertheless attempts to show that Greyhound did *not* act pursuant to  
9 the directions of CBP agents in allowing them to board and search its buses at the  
10 Spokane Intermodal Center. ECF No. 10 at 13-17.

11  
12 Relying on the allegations of its Complaint, *see* ECF No. 10 at 14 (citing Compl.  
13 ¶¶ 23-27, 49-70 [ECF No. 1-1 at 12-13, 20-23]), Plaintiff asserts that, in allowing CBP  
14 agents to board and search its buses at the Spokane Intermodal Center, Greyhound did  
15 not act under the agents, but instead acted in accordance with its own “voluntary  
16 business decisions,” ECF No. 10 at 14.

17  
18 But Plaintiff’s allegations about unspecified “voluntary business decisions” in  
19 its Complaint “are conclusory and not entitled to be assumed true.” *Ashcroft v. Iqbal*,  
20 556 U.S. 662, 681 (2009). And Plaintiff’s assertion about the same unspecified  
21 “voluntary business decisions” here is no better. It is hard to imagine that Greyhound  
22 could reasonably have made any “voluntary *business* decision” to engage in actions  
23 that could, and would, garner it such unfavorable, albeit undeserved, publicity. *See*,  
24 *e.g.*, ECF No. 1-1 at 15-16.  
25  
26  
27

1 Not only does reliance on the allegations of its Complaint fail to help Plaintiff,  
2 they actually hurt it.

3  
4 In its Complaint, Plaintiff alleges that “CBP’s approach to conducting  
5 [immigration] enforcement sweeps relies on the cooperation of ... Greyhound,” and  
6 that Greyhound has given CBP the “cooperation” it has “relie[d] on.” ECF No. 1-1 at  
7  
8 12. Through a footnote and an exhibit, Plaintiff also alleges that Greyhound is a  
9 “strategic partner” of CBP and is “committed to supporting CBP enforcement actions.”  
10 Id. at 14 n.14 & 53-57 (Ex. 9). The first allegation is spin, without apparent basis. The  
11 second allegation is also spin, based not on any statement by Greyhound, but instead  
12 on an email from a “DHS Legislative Fellow” (also an Assistant Chief, U.S. Border  
13 Patrol) to a CBP official. The sense of these allegations, as spun, by Plaintiff is not  
14 that Greyhound happens to do something that happens to assist, or to help carry out,  
15 “immigration enforcement sweeps” by CBP agents, but that Greyhound allows CBP  
16 agents to board and search its buses in an effort to assist, and to help carry out, these  
17 very “sweeps.” Plaintiff thereby effectively alleges that Greyhound was involved in  
18 an effort to assist or help CBP agents carry out their duties or tasks as their de facto  
19 agent.”  
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23

24 Of course, notwithstanding the spin of Plaintiff’s allegations, Greyhound’s  
25 “cooperation” with CBP is hardly voluntary. Here are the facts on the ground, as  
26 recounted by Gregory Paige, a Greyhound driver who drove either to or from or through  
27



1 the Spokane Intermodal Center for more than 5 years until March 2020:

2 During my years driving for Greyhound, CBP agents boarded my buses  
3 frequently to conduct immigration checks at the Spokane Intermodal Center ....

4 The CBP agents who boarded my bus worked in teams of at least two agents.  
5 They wore khaki colored, military style uniforms and body armor. They were  
6 visibly armed with guns on their hips. CBP also had trained dogs with them and  
7 the dogs wore vests with Custom and Border Patrol insignia. The CBP agents'  
vehicles and uniforms were marked with Custom and Border Patrol insignia. I  
was the sole Greyhound employee with the bus and I was unarmed.

8 CBP agents never asked me for permission or my "consent" to board the bus. I  
9 never planned or coordinated any of CBP's activities with them, including their  
10 bus checks or boarding times. I am not aware of any other Greyhound driver  
11 doing so. Greyhound management never asked me to cooperate with CBP.  
12 Generally speaking, CBP was just there at the center when I showed up with my  
13 bus or was getting ready to depart. Drivers did not have an option. CBP waited  
for us to check passenger tickets and then they just boarded the bus. There was  
no choice in the matter.

14 CBP's normal procedure was to wait for me to check all of my passengers' tickets  
15 before CBP boarded the bus. After all the passengers boarded, one CBP agent  
16 would board the bus and go to the back of the bus, and the other agent would  
17 enter the bus just inside and stand by the door. I could not get on the bus because  
the agent was at the door. After the CBP agents were done on the bus, they would  
get off the bus, and then I would enter the bus to commence my route.

18 On some occasions, before boarding the bus, the CBP agent would ask me "Are  
19 you done" before boarding. On most occasions, CBP would just wait for the last  
20 passenger to get on the bus, and then the CBP agents would board. Again, they  
never asked for my permission or consent. They just got on the bus.

21 At some point in late 2017 or early 2018, I recall that CBP's activity picked up  
22 significantly at the Spokane Intermodal Center. Prior to this change, CBP agents  
23 were present 2-3 times during the 6 days I was present at the Spokane Intermodal  
24 Center; and there would be one CBP vehicle present in the bus slip area when I  
25 arrived or departed. After the change in or around 2018, CPB regularly had three  
26 CBP marked vehicles present and several more CBP agents were on site than in  
27 the past. After the change, CBP agents were present 4-5 times out of the 6 days I  
was at the center. After the change, CBP agents boarded buses more regularly,  
there were more CBP agents present at the Spokane Intermodal Center. While the  
Spokane Intermodal Center always seemed to be a CBP checkpoint, in 2018 and



thereafter there was definitely a lot more CBP activity. Based on my observations, CBP agents were almost always around and they boarded every bus that passed through the center. It went from one CBP team (2 agents) to multiple teams of agents (approximately 4-6 agents), and from one vehicle in the loading area to a whole army of trucks.

Paige Decl., ¶¶ 8-13 (paragraph numbers omitted).<sup>3</sup>

**b. There Is a Connection or Association, And Indeed a Causal Nexus, Between Greyhound's Actions and Plaintiff's Claims**

The second question to address is, Is there is a connection or association between Greyhound's actions and Plaintiff's claims? The answer is, again, Yes. Indeed, there is a causal nexus between the actions and claims.

"[T]he 'hurdle erected by [the causal-nexus] requirement is quite low.'" *Goncalves*, 865 F.3d at 1245. To clear this hurdle, Greyhound "need show only that the challenged acts"—allowing CBP agents to board and search its buses at the

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<sup>3</sup> Plaintiff cites *Fidelitad, Inc. v. Insitu, Inc.*, 904 F.3d 1095 (2018), and *Washington v. Motel 6 Operating LP*, No. C18-337-MJP, 2018 WL 2277173 (W.D. Wash. May 18, 2018), to support its assertion that Greyhound did not act pursuant to the directions of CBP agents. *Fidelitad* and *Motel 6* are both distinguishable: In *Fidelitad*, unlike here, the defendant admitted that it had "no ... communication" with any federal officer. 904 F.3d at 1100 & n.2. And in *Motel 6*, unlike here, the defendant admitted that it acted "voluntarily" and was "free to disregard ... requests" by any federal officer. 2018 WL 2277173, at \*2.





1 Spokane Intermodal Center—“ ‘occurred because of what [it was] asked to do by [the  
2 CBP agents].’ ” *Goncalves*, 865 F.3d at 1245.

3  
4 A fortiori, the hurdle erected by the connection-or-association requirement is  
5 even lower. To clear *this* hurdle, Greyhound need show only that its allowing of CBP  
6 agents to board and search its buses at the Spokane Intermodal Center “ ‘relate[d] to’ ”  
7 the agents’ approaching of its buses there. *Latiolais*, 951 F.3d at 293.

8  
9 Greyhound can clear the higher of these two hurdles and hence can clear the  
10 lower one too. To make the showing for the higher hurdle, Greyhound need only cite  
11 the allegations that Plaintiff makes in its Complaint. ECF No. 1-1 at 5-6, 7-18. To  
12 quote only one such allegation, Greyhound “allow[ed] CBP agents to board” and  
13 search “its buses” at the Spokane Intermodal Center “when they requested permission  
14 to do so.” *Id.* at 14. Thus, Greyhound’s conduct occurred because of, and related to,  
15 the CBP agents’ conduct.

16  
17  
18 Plaintiff nevertheless attempts to show there is *no* causal nexus between  
19 Greyhound’s actions in allowing CBP agents to board and search its buses at the  
20 Spokane Intermodal Center and the claims in its Complaint. ECF No. 10 at 17-18. In  
21 support, Plaintiff repeats its meritless assertion that, in allowing CBP agents to board  
22 and search its buses, Greyhound did not act under the agents, but instead acted in  
23 accordance with its own “voluntary business decisions.” Repetition, however, does  
24 not make the assertion any less meritless. Since Plaintiff fails to show there is no causal  
25  
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nexus, it necessarily fails to show there is no connection or association.<sup>4</sup>

### 3. Greyhound Can Assert a Colorable Federal Defense, And Plaintiff Fails to Show Otherwise

Third, Greyhound can assert a colorable federal defense against Plaintiff's claims, specifically, one based on the doctrine of conflict-preemption.

"To be 'colorable,' the asserted federal defense need not be 'clearly sustainable,' as [the Federal Officer Removal Statute] does not require a federal official or person acting under him 'to "win his case before he can have it removed." '... Instead, an asserted federal defense is colorable unless it is 'immaterial and made solely for the purpose of obtaining jurisdiction' or 'wholly insubstantial and frivolous.' " *Latiolais*, 951 F.3d at 296-97.

Whatever Plaintiff might claim about Greyhound's purpose in asserting its federal defense of conflict-preemption, the defense is colorable because, as will appear, it is *neither* immaterial *nor* wholly insubstantial and frivolous. At their core, Plaintiff's claims allege that Greyhound engaged in unlawful conduct under the CPA and WLAD

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<sup>4</sup> Plaintiff cites *Massachusetts v. Exxon Mobil Corporation*, No. 19-12430-WGY, 2020 WL 2769681 (D. Mass. May 28, 2020), to support its assertion there is no causal nexus between Greyhound's actions and the claims in its Complaint. *Exxon-Mobil* is distinguishable. There, there was no causal nexus of any kind. *Id.* at \*11. Here, as shown in the text, the causal nexus is direct and strong.

1 by allowing CBP agents to “unlawfully” board and search its buses at the Spokane  
2 Intermodal Center. In other words, they allege the CPA and WLAD required  
3 Greyhound to bar CBP agents from “unlawfully” boarding and searching its buses  
4 there, but that it failed to do so.

6 State law that conflicts with federal law is preempted and is thereby rendered  
7 invalid. *ONEOK, Inc. v. Learjet, Inc.*, 575 U.S. 373, 376 (2015). State law conflicts  
8 with federal law: (1) where it is impossible to comply with both federal and state law,  
9 *id.* at 377; (2) where state law stands as an obstacle to the accomplishment and  
10 execution of the full purposes and objectives of Congress as reflected in federal law,  
11 *id.*; or (3) where there is “immunity” under *Boyle v. United Technologies Corp.*, 487  
12 U.S. 500, 507 (1988), i.e., where there is an area of uniquely federal interest and a  
13 significant conflict exists between the federal interest and the operation of state law.

17 Recall that, as a general matter, the establishment and operation of a temporary  
18 checkpoint by CBP agents pursuant to Section 1357 is consistent with the Fourth  
19 Amendment when the location in question, like the Spokane Intermodal Center, is  
20 within 100 air miles from the United States-Canada border.

22 And recall that, specifically, Section 1357 authorizes CBP agents to board and  
23 search Greyhound’s buses at the Spokane Intermodal Center. The Mayor of the City  
24 of Spokane has recognized as much. The Spokane City Council passed Ordinance No.  
25 C35681, purporting to prohibit CBP agents from, among other things, using nonpublic  
26  
27



1 areas in the Spokane Intermodal Center to board or search Greyhound's buses there,  
2 except with the "express, written approval of the Mayor." Miller Decl., Ex. 8 at 5. The  
3 Mayor determined not to enforce the ordinance because Section 1357 authorizes CBP  
4 agents to search and board Greyhound's buses there. *Id.*, Ex. 12 at 2-3, Ex. 13 at 2, 5-  
5 7 & Ex. 14 at 1 ("Operationally, these agents don't seek permission or consent from a  
6 local elected official or municipal employee to complete their assignments, so neither  
7 the Mayor nor City employees have the authority to impede such activity"). By  
8 authorizing CBP agents to board and search Greyhound's buses there, Section 1357  
9 prohibits Greyhound from barring them from doing so.

10 To the extent the CPA and WLAD *require* Greyhound to do what Section 1357  
11 *prohibits* Greyhound from doing—i.e., barring CBP agents from boarding and  
12 searching its buses at the Spokane Intermodal Center—the CPA and WLAD are in  
13 conflict with Section 1357 and, as such, are preempted for each of three reasons. *First*,  
14 Greyhound cannot comply with both the CPA and WLAD and Section 1357. *Second*,  
15 the CPA and WLAD stand as an obstacle to the accomplishment and execution of the  
16 full purposes and objectives of Congress as reflected in Section 1357, i.e., to provide  
17 for the uniform enforcement of uniform immigration law. *Third*, there is "immunity"  
18 since immigration is an area of uniquely federal interest and a significant conflict exists  
19 between the federal interest as revealed in Section 1357 and the operation of the CPA  
20 and WLAD. Underlying each of these three reasons is the fact the CBP agents'



1 boarding of Greyhound's buses at the Spokane Intermodal Center was lawful—and  
2 certainly Greyhound, which is not a court, was not competent to determine otherwise.

3  
4 Because Plaintiff's claims are based on the CPA and WLAD, and because the  
5 CPA and WLAD are preempted and, as such, rendered invalid, Plaintiff's claims are  
6 deprived of legal support and collapse under their own weight.

7  
8 Plaintiff attempts to show that Greyhound cannot assert a colorable federal  
9 defense of conflict-preemption. ECF No. 18-23. Plaintiff asserts that it is possible for  
10 Greyhound with Section 1357 as well as the CPA and WLAD because, it says, Section  
11 1357 "imposes no obligation" on Greyhound. *Id.* at 22. Nonsense. As shown, in  
12 authorizing CBP agents to board and search Greyhound's buses at the Spokane  
13 Intermodal Center, Section 1357 prohibits Greyhound from barring them from doing  
14 so—in other words, it imposes an obligation not to stand in their way.

15  
16  
17 Plaintiff next asserts the CPA and WLAD do not stand as an obstacle to the  
18 accomplishment and execution of the full purposes and objectives of Congress as  
19 reflected in Section 1357. Also nonsense. To the extent the CPA and WLAD require  
20 Greyhound to bar CBP agents from boarding and searching its buses at the Spokane  
21 Intermodal Center, they prevent the uniform enforcement of uniform immigration law,  
22 which under Section 1357 prohibits a bus company or anyone else from barring CBP  
23 agents from boarding or searching buses at any permanent or temporary checkpoint  
24 within 100 air miles from any external boundary of the United States.  
25  
26  
27



1 Plaintiff then asserts there is no “immunity.” Tellingly, Plaintiff does not deny  
 2 that immigration is an area of uniquely federal interest. Neither does Plaintiff deny  
 3 that a significant conflict exists between the federal interest, as revealed in Section  
 4 1357, and the operation of the CPA and WLAD. Instead, Plaintiff uses lower court  
 5 decisions in a transparent effort to limit *Boyle* in such a fashion as to render it  
 6 inapplicable to this case. Even if it could thus succeed in knocking out the “immunity”  
 7 basis for conflict-preemption, the two other bases would remain.<sup>5</sup>

10 Lastly, Plaintiff asserts that, in addition to alleging that Greyhound engaged in  
 11 unlawful conduct under the CPA and WLAD by allowing CBP agents to “unlawfully”  
 12 board and search its buses, its claims also allege that it failed to warn its passengers of  
 13 the agents’ “unlawful” conduct and of the consequences of such conduct. True, but  
 14 immaterial. As noted, there was no “unlawful” conduct to warn of.

#### 17 IV. CONCLUSION

18 For these reasons, this Court should deny Plaintiff’s Motion to Remand.  
 19 Because that is so, it should also deny its request for an award of fees and costs.  
 20

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22 <sup>5</sup> Plaintiff cites *Motel 6* to support its assertion of no “immunity.” Again, *Motel*  
 23 *6* is distinguishable. There, unlike here, there was no “immunity” because the  
 24 defendant did “not establish[ ] any ‘significant conflict’ between the CPA and WLAD  
 25 and federal immigration policy.” 2018 WL 2277173, at \*3.  
 26  
 27

1 Dated this 23rd day of July, 2020.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of July, 2020 the foregoing document was electronically filed with the Clerk of the Court using the CM/ECF System. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system to the following:

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